

CONCISE EXPLANATORY STATEMENT

Self-Insurance Risk Pools

Time was made available from August 21, 2013 to October 10, 2013 for anyone interested in the proposed rules to provide comment on the proposed rules. During this time, public hearings were held on September 30, 2013 and October 2, 2013.

We subsequently prepared a preliminary Concise Explanatory Statement, extended the public comment time to January 11, 2014 and held an additional public hearing on January 9, 2014. This was done to make sure that stakeholders understood how we considered all comments in reaching our preliminary decision and had opportunity to provide additional comment.

Written comment was received by email, online via the department's website and at the public hearings. Oral comment was received at the public hearings.

All oral and written comment received during the public comment periods was considered by the department.

Copies of all comments are available on our website here:

<http://www.des.wa.gov/about/LawsRules/Pages/RuleMaking.aspx>

Adopted date under consideration: February __, 2014

Effective date under consideration: January 1, 2015

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I. Purpose of Rulemaking

RCW 48.62.061 directs the state risk manager to maintain rules for the management, operation, and solvency of self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits.

The self-insurance rules were originally adopted in 2011. The proposed amendments are needed to strengthen the funding requirements for self-insurance pools and establish procedures for the state risk manager to follow when pools fall below appropriate funding levels.

These rule amendments:

- Increase the combined asset requirements for risk pools from the current 70% to the 80% confidence level.
- Clarify when a pool has met the Primary Asset Test.
- Establishes criteria for and clearly identifies a second solvency test as the Total Asset Test.
- Identify the procedure to be followed by the state risk manager when a pool operating under supervisory watch of the state risk manager declines to the point that monetary reserves available to pay claims fall below the 70% confidence level.
- Clarify the specific work to be done by an independent actuary on behalf of the state risk manager.
- Require risk pools to provide audited financial statements to the state risk manager within eight months of fiscal year end.

II. Changes to the Proposed Rules (Proposed rule versus rule adopted):

There are no changes to the proposed rule as filed under the CR-102 with the Office of the Code Reviser.

	Summary of Comments	Our Response
1	<p>The department received comments in support of the rulemaking.</p> <p>Comments included support:</p> <ul style="list-style-type: none"> For the decrease in the time required to provide audited statements to the State Risk Manager. For increasing the confidence rate from 70 percent to 80 percent for year-end solvency reports. <p>Additional comments supporting the rule amendments are summarized below.</p> <ul style="list-style-type: none"> ➤ These requirements are important to ensure the fiscal soundness of self-insured pools in the state and were needed to discover in advance when a pool was in financial trouble. Then proactive steps could be taken to ensure the risk pool is funded at adequate levels. ➤ The stakes are too high to compromise on these issues. ➤ Financial solvency is paramount in governmental pooling. ➤ Good stewardship of public assets should be foremost in any business model using public assets. ➤ The Washington Risk Pool Advisory Council spent countless hours debating the merits of the proposed changes and reached a good compromise during the WRAC meetings. ➤ We recognize the efforts to protect the public interest through the use of two solvency tests using Primary Assets and Total Assets. ➤ We appreciate the delineation of the three State Risk Manager response levels to help ensure that minimum financial solvency standards are met: corrective action that can include a Cease & Desist order, supervisory watch, and a supervisory Cease & Desist order. ➤ Throughout this process, there were two distinct opinions related to the amount of needed assets, and we are glad that the State Risk Manager took the more conservative stand ➤ The self-insurance risk pools provide an important service to government entities, and the ongoing stability of these pools serves the public interest well. 	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

	Summary of Comments	Our Response
	<ul style="list-style-type: none"> ➤ We believe these modifications are reasonable given the expectations of members that their risk pool insolvent, and capable of protecting their assets, especially during this period of prolonged economic distress for many of our members. ➤ These changes will have a negligible impact on our current program including actuarial and asset test requirements. We believe it is incumbent upon the State's regulatory body to ensure that all public pooling entities are adequately funded to protect the interests of the members but also the constituents they represent. We can find no reason not to move forward with these changes and would encourage their adoption as soon as practicable. ➤ Based on my research and the advice of the Non Profit Insurance Program I respectfully request these rules remain as written. ➤ Pools have uncertain costs. As with any business with uncertain costs, some sort of capital is necessary to absorb the uncertainty. The amount of capital required is a function of both the risk/uncertainty and the level of importance it is for the pool to maintain solvency. The greater the risk, the more capital is required. And similarly, if maintaining solvency is a low priority, then less capital is required. 	
2	<p>Department of Enterprise Services (DES) is being pressured to direct changes to Non-Profit Insurance procedures that would most likely drive up premium costs in order to make commercial insurance companies more competitive with the Non-Profit programs. Such action would place an unnecessary and unfair financial burden on volunteer and not for profit philanthropic organizations here in Washington State. It would, in fact, adversely impact on services to veterans, homeless programs, fire protection services and possibly every other decent humanitarian endeavor in the state, solely to line the coffers of big business.</p>	<p>Regarding concerns about increased cost and different pooling models-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The department is unaware of any inappropriate pressure on the department to direct changes to the non-profit insurance procedures.</p> <p>The department is unaware of any data supporting the premise that an increase in confidence levels results in a corresponding increase in insurance premium costs.</p> <p>These requirements apply equally to all risk pools and do not provide a competitive advantage for any risk pool. Pools still retain flexibility in making decisions to fund claims at higher confidence levels or to meet</p>

	Summary of Comments	Our Response
		<p>the minimum confidence level standards.</p> <p>Most pools are already funding in excess of the 80% confidence level.. 13 of 15 risk pools are currently funded at the 95% confidence level. No increase to members of these pools should occur as a result of these proposed changes to the rules. Any pool that is funded over the minimum required level (including NPIP) has the discretion to return excess funds over the 80% confidence level to their members.</p> <p>No changes were made based on these comments.</p>
3	<p>The department received comments that were critical of the stakeholder process which included the formation of the Washington Risk Pool Advisory Council.</p> <p>Meetings were held by a committee that was called the Washington Risk Pool Advisory Committee (WRAC), but the process for how rule making would be considered by DES was never defined. At no time was a problem statement identified by the representatives from DES or members of the committee. Additionally, no minutes were taken for the meetings and members of the committee were left to wonder what decisions had been made, if at all. Finally, it appears that DES only considered proposed rule making changes that were submitted by a single member of the committee and disregarded all other proposals submitted by other members of the committee.</p>	<p>Regarding concerns about the Washington Risk Pool Advisory Council and the process-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The Property and Liability Advisory Board was eliminated during the 2009 legislative session. To provide an avenue of communication with stakeholders, the state risk manager formed the Washington Risk Pool Advisory Council (WRAC). The WRAC is an informal, ad hoc advisory group comprised of a representative from each of the fifteen property and liability risk pools. As an idea-sharing discussion group, no official minutes are taken.</p> <p>Beginning in November of 2011, the WRAC met to review and discuss rules to increase the financial soundness of risk pools. All WRAC members and interested stakeholders received meeting notices and agendas in advance of the meetings. WRAC member feedback was solicited by the state risk manager throughout the process. Several drafts of suggested changes to WAC 200-100, based on WRAC member input, were sent out to WRAC members and stakeholders.</p> <p>In January 2013 the WRAC finished their final draft of the proposed language. This draft was submitted to DES as part of a petition received from a WRAC member. Once submitted, rules require that a petition must be considered and some action taken by the department. After formal review of the petition and rules submitted, the department felt it was necessary to move with forward with the rulemaking process to ensure financial soundness of risk pools in the state.</p>

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		No changes were made based on these comments.
4	<p>Proposed Change:</p> <p>1. WAC 200-100-03001 Standards for solvency-Actuarially determined liabilities, program funding and liquidity requirements. All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the seventy, eighty, and ninety percent confidence level.</p> <p>Why this change is unwarranted:</p> <p>The rules currently governing self-insurance pools require that the programs fund to the 70th percentile. We believe that the current requirement is sufficient to maintain financially solvent pools. The 70th percentile requirement was created barely two years ago and there has not been sufficient time to determine that a more stringent requirement is necessary.</p>	<p>Regarding concerns about increasing required funding to 80% confidence level -</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>Actuaries working with public risk pools have determined that there is a realistic possibility that pools funding at a 70% confidence level are at risk of not having enough funds to pay claims in 3 out of every 7 years, (See attached white paper by Marn Rivelle, FCA, ACAS, MAAA – Independent Actuarial Consultant)</p> <p>Further, the current 70% confidence level is only considered marginally adequate by actuaries, while a 95% confidence level is considered conservative.</p> <p>Recognizing that the industry standard for governmental risk pools is between the 80th and 90th percent confidence level, the proposed rules are needed to establish a minimum requirement for funding of outstanding claims to make sure risk pools operate in a financially sound way so that there will be enough cash reserves available to pay claims behalf of risk pool members.</p> <p>Because of this, actuaries recommend public risk pools fund outstanding claims at minimum confidence levels between 80 and 90 percent.</p> <p>All risk pools follow a model in which some portion of the liability for outstanding claims is jointly self-insured and paid from a pool of funds established by members. If monies are insufficient to fund unpaid claims in that self-insured layer, members must provide additional monies in response to a “cash call” from the pool. Even if a member leaves a pool, it can still be required to provide funds for past year shortages in which the member participated in the pool.</p> <p>This language is needed to ensure that risk pools adequately fund claims at a minimum confidence level of 80 percent. The effect will be that pools will place less reliance on a member “cash call” which would require members to provide additional monies for prior year claims which they understood to be funded when they paid their annual fee to</p>

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		<p>the pool for coverage.</p> <p>When unpaid claim liabilities are adequately funded, the financial risk to local government and nonprofit members is reduced.</p> <p>No changes were made based on these comments.</p>
5	<p>WAC 200-100-03001 Standards for solvency-Actuarially determined liabilities, program funding and liquidity requirements.</p> <p>Joint self-insurance programs operating under an approved plan and making satisfactory progress according to the terms of the plan shall remain under supervisory watch by the state risk manager until the terms of the approved plan have been met. Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements;</p> <p>Increase in frequency of examinations, the cost of which shall be the responsibility of the program;</p> <p>Submission of quarterly reports;</p> <p>On-site monitoring by the state risk manager; or</p> <p>Service of a cease and desist order upon the program.</p> <p>Why this change is unwarranted: This requirement is too vague as to the definition of satisfactory progress. We believe that this rule allows too much discretion to the State Risk Manager including the use of a cease and desist order. We believe that this verbiage would allow unilateral power to the regulator without providing recourse mediation or resolution by some third party.</p>	<p>Regarding concerns about issuance of a cease and desist order-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>RCW 48.62.091(3) states that when the state risk manager determines that a joint self-insurance program covering property or liability risks is in violation of the statute or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.</p> <p>The proposed change clarifies that risk pools making progress toward meeting financial requirements in accordance with the plan submitted to and approved by the state risk manager remain under supervisory watch until the plan is completed, but a pool that is not making progress is subject to specific detailed actions listed in the proposed change.</p> <p>This clarification allows pools to know what is required to operate in a safe financial condition and what process will occur if they do not meet financial standards. The proposed language is needed because a risk pool that is operating under an approved plan but continues to decline financially puts members at financial risk of making additional unscheduled payments or of not having their claims paid by the risk pool.</p> <p>The proposed change does not provide any additional powers to the risk manager from those already provided by statute. The Administrative Procedures Act (RCW 34.05) and WAC 200-100-210 already include a process an entity can follow to seek an administrative hearing after issuance of a cease and desist order (see below).</p> <p><i>WAC 200-100-210 Standards for operations—Appeals of cease and</i></p>

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		<p><i>desist orders.</i></p> <p><i>Within ten days after a joint self-insurance program covering property or liability risks has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapter 34.05 RCW and chapter 10-08 WAC.</i></p> <p>No changes were made based on these comments.</p>
6	<p>WAC 200-100-037 Standards for management and operations-Financial plans.</p> <p>(d) The submission of audited financial statements to the state risk manager within <u>eight months</u> of the program's fiscal year end which meet the requirements of the <u>state auditor</u> and state risk manager as described in <u>this chapter</u>.</p> <p>Why this change is unwarranted:</p> <p>Many pools have experienced difficulties with required audits being completed within the current one-year requirement. We are concerned that this change will mean that insurance pools will be considered out of compliance with the State Regulator if the Auditor's office is unable to complete the required audit within the regulatory timeline. Additionally, we are concerned that this required change in audited financial statements will remain irrelevant as long as some insurance pools have a three year notice requirement. If the Regulator's goal is transparency for members, then reduce the notice requirement to only one year.</p> <p>Many nonprofit entities provide much-needed services within their communities – services that would not be available if operating margins are increased by arbitrary regulations and rule changes. These rule changes are contrary to the intent of legislation passed 10 years ago that created the ability for governments and nonprofits to self-insure. That legislation allowed for a prudent, financially responsible process to provide less expensive options to entities that serve the public. By singling out one type of pool model, these proposed rule changes will not enhance fiduciary responsibility. They will, however, make it more difficult for nonprofits to serve their communities.</p> <p>We respectfully request the rules remain as written, and that DES look into the reasons why DES staff thought it was necessary to bring these rule changes</p>	<p>Regarding concerns about the requirement to provide audited financial statements within eight months of fiscal year end instead of the current one year requirement -</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The State Auditor's Office has committed that they will be able to complete the audits within the eight month time period, provided pools produce complete, timely and accurate financial statements ready for audit.</p> <p>The language is needed to increase transparency to risk pool members so that they may know the financial condition of their risk pool by viewing the timely, audited financials on the SAO website. This timely information helps them to make the best decisions about where to obtain their insurance coverage. Timely audited financial information also is valuable to the Office of Risk Management in determining whether risk pools are meeting financial solvency requirements.</p> <p>No changes were made based on these comments.</p>

	Summary of Comments	Our Response
	forward.	
7	<p>WAC 200-100-037 Standards for management and operations-Financial plans.</p> <p>(d) The submission of audited financial statements to the state risk manager within eight months of the program's fiscal year end which meet the requirements of the state auditor and state risk manager as described in this chapter.</p> <p>Why this change is unwarranted:</p> <p>Many pools have experienced difficulties with required audits being completed within the current one-year requirement. We are concerned that this change will mean that insurance pools will be considered out of compliance with the State Regulator if the Auditor's office is unable to complete the required audit within the regulatory timeline. Additionally, we are concerned that this required change in audited financial statements will remain irrelevant as long as some insurance pools have a three year notice requirement. If the Regulator's goal is transparency for members, then reduce the notice requirement to only one year</p>	<p>Regarding concerns about reducing notice requirements to only one year-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The state risk manager has specific statutory authority to set standards in rule for contracts between self-insurance programs and private businesses including standards for contracts between third-party administrators and programs (See 48.62.061(3)). Pools are formed by interlocal agreement per statutory requirements. The state risk manager does not have authority to stipulate the notice requirements contained in the interlocal agreements between members.</p> <p>No changes were made based on these comments.</p>
8	<p>For ease of review, specific comments/suggestions are presented by the Chapter section of reference. These are followed by more thought-provoking comments pertinent to</p> <p>WAC 200-100-03001 (2).</p> <p><u>WAC 200-100-02023</u>: We find the proposed changes conform with our Board's recommendations provided earlier. We have no comment or suggestion regarding the language proposed to be deleted or to be added.</p> <p><u>WAC 200-100-03001</u></p> <p>We suggest that the last word in subsection (1) be made plural, i.e. "<i>level</i>" should be "<i>levels</i>".</p> <p>We suggest that the intent of the rule would be better communicated if the last sentence in subsection (2) were changed to: "<i>The state risk manager... upon the program((;)) <u>and/or</u> to require... fiscal year end.</i>"</p> <p>We suggest that the intent of the new paragraph in subsection (4) would be better understood if the words "<i>one or more of</i>" were added near the end of the preamble and the word "<i>or</i>" at the end of sub-subsection (c) were changed to "<i>and</i>"; that is, to modify the new paragraph (preamble) to: "<i>Joint self-insurance</i></p>	<p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The changes proposed by the comment would not change the meaning of the rule language. We have chosen to retain the same proposed language crafted by the Washington Risk Pool Advisory Council and submitted by the petitioner.</p> <p>No changes were made based on these comments.</p>

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	<p><i>programs... may be subject to one or more of the following requirements:" and that sub-subsection (c) read: "On-site monitoring by the state risk manager; ((or)) and".</i></p> <p>We suggest minor changes to the new subsection (6) as follows: <i>"All joint self-insurance programs... unpaid claims estimates at the seventy percent((;)) confidence level, as determined by... cease and desist order".</i></p> <p>Following another and even closer review of the <i>"shall establish and maintain primary (and secondary) assets"</i> references in both WAC 200-100-03001 (2) and (3), we might now better understand the SAO's initial Restricted Assets accounting/reporting directives. But we also know that the intent of these rules were intended to measure and assure solvency of the pooling entities. Net Position might be a better accounting basis and measurement tool.</p> <p>Yet until that alternative concept is developed and appropriately discussed, might you consider clarifying the intent of the rules by changing the first sentence in subsections (2) and (3) as follows:</p> <p><i>The governing body of the joint self-insurance program shall ((establish and maintain)) possess primary assets ((in an amount)) that in total are at least ((equal)) equivalent to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.</i></p> <p><i>The governing body of ((the)) every joint self-insurance program operating under this chapter shall ((establish and maintain)) possess ((total)) primary and secondary assets ((in an amount)) that in total are ((equal)) equivalent to or greater than the unpaid claims estimate at the ((seventy)) eighty percent confidence level as determined by the program's actuary as of fiscal year end.</i></p>	
9	<p>WRAC (DES) Process:</p> <p>The WRAC committee was established with the suggestion by the former Director of the Office of Financial Management (OFM). This committee was assembled after concerns brought forward by NPIP and other programs regarding regulatory oversight – specifically legislation that was introduced. It was also assembled after the predecessor committee "Property Advisory Board" ceased operations due in part to our former Governor terminating numerous committee and boards at the very beginning of the recession.</p> <p>Unlike the Property Advisory Board process, the WRAC process never established meeting rules, procedures or process – especially for consensus</p>	<p>Regarding the funding requirements for nonprofits during WRAC discussion-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>Because nonprofits do not have the same taxing, bonding and other financial mechanisms available as do local governments, the WRAC committee discussed requiring nonprofits to fund claims at the 90% confidence level. The concern was expressed by governmental risk pool staff members that nonprofit members would have more difficulty responding to a "cash call" of the membership than would local</p>

	Summary of Comments	Our Response
	taking needs.	<p>government members of a risk pool if pool funds were insufficient to pay claims.</p> <p>After some discussion, the department determined that the funding requirements would remain the same for nonprofits as for governmental risk pools (at the 80% confidence level).</p> <p>No changes were made based on these comments.</p>
10	<p>Please consider my comments on proposed changes to Chapter 200-100 WAC, Self-Insurance requirements governing local government and nonprofit self-insurance, on behalf of Conservation Northwest, a Washington-based 501(c)(3) nonprofit with 5,000 members in the state. My organization values its insurance coverage provided by the Nonprofit Insurance Program.</p> <p>The process for the proposed rulemaking does not appear to have been open and balanced, and should be extended to consider additional viewpoints.</p>	<p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>DES agrees that the rulemaking period should be extended to allow for additional viewpoints. Because of this, DES filed for a continuance and extended the time for public comment to January 11, 2014 and held an additional public hearing on January 9, 2014.</p> <p>No changes were made based on these comments.</p>
11	Based on my research and the advice of the Non Profit Insurance Program I respectfully request these rules remain as written.	<p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>No changes were made based on this comment.</p>
12	<p>I think that the changes are unnecessary and targeted toward a certain class of business to create a competitive advantage for one type of pool versus the privately operated pools, of which I'm a board member.</p> <p>I'm particularly objecting to the fact that these increased actuarial levels are said to be costless. We're already spending in the tune of \$50,000 a year for actuarial services, and these services don't come cheap. And so when they have to be done at increasingly high confidence levels, it will definitely be an expense to the pools.</p> <p>NPIP has been successful since its inception, and it's attracted the attention of other self-insurance programs. These programs are comprised of municipal corporations, such as cities and counties. NPIP is the only program comprised entirely of non-profits.</p> <p>As I mentioned earlier, we don't have any other place to go, and we feel we're being caught somewhat in competition between one model of pools that can -- is administered by the State, and the other privately run pools, and we don't have</p>	<p>Regarding concerns that proposed rules provide a competitive advantage for one type of pool versus privately operated pools-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The proposed changes do not target any class of business.</p> <p>All nonprofit and governmental property and liability risk pools are formed under RCW 48.62 and follow the requirements of WAC 200-100. The rules are applied equally to all fifteen pools formed under this chapter. The rules do not provide a competitive advantage for any of the property and liability risk pools.</p> <p>No changes were made based on this comment.</p> <p>Regarding the cost of actuarial services-</p> <p>The department appreciates the time taken to provide this comment</p>

	Summary of Comments	Our Response
	<p>another place to go.</p> <p>No one was offering me insurance when, on the 30th of December of 2002, I was going to shut my doors like the Federal Government is going to shut, maybe, tomorrow. We were going to have to shut because we could not operate the next day. And finally, after 47 proposals went out, we were able to be insured.</p> <p>We believe that the rule changes are unnecessary and that they'll further increase the burden of funding insurance to non-profits, and we believe that the self-insurance requirements are currently being met. We're meeting all of the strictures and the particulars that we're required to do. We study hard, we work hard. We work diligently as volunteers working with our third-party administrator, and we see absolutely no reason for these rules to increase the amount and the power of the Risk Manager's office to cease and desist our efforts to insure non-profits in an increasingly tough environment for non-profits to carry out their essential services to the citizens of the State of Washington.</p>	<p>and recognizes the concerns and opinions presented.</p> <p>The amount of work done by an actuary in estimating outstanding claims at various confidence levels would likely not change as this is currently part of the work actuaries perform for risk pools. The amended rules would require pools to meet the higher confidence level however.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about increased cost -</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The proposed language is needed to establish a minimum requirement for funding of outstanding claims to ensure risk pools operate in a financially sound way, which allows claims to be paid on behalf of risk pool members.</p> <p>The industry standard for governmental risk pools is between the 80th and 90th percent confidence level. These requirements apply equally to all risk pools and do not provide a competitive advantage for any risk pool. Pools still retain flexibility in making decisions to fund claims at higher confidence levels or to meet the minimum confidence level standards.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about supervisory watch and the issuance of a cease and desist order-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>RCW 48.62.091(3) states that when the state risk manager determines that a joint self-insurance program covering property or liability risks is in violation of the statute or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.</p> <p>The proposed change clarifies that risk pools making progress toward</p>

	Summary of Comments	Our Response
		<p>meeting financial requirements in accordance with the plan submitted to and approved by the state risk manager remain under supervisory watch until the plan is completed, but a pool that is not making progress is subject to specific detailed actions listed in the proposed change. This clarification allows pools to know what is required to operate in a safe financial condition and what process will occur if they do not meet financial standards.</p> <p>The proposed language is needed because a risk pool that is operating under an approved plan but continues to decline financially puts members at financial risk of making additional unscheduled payments or of not having their claims paid by the risk pool.</p> <p>The proposed change does not provide any additional powers to the risk manager from those already provided by statute. The Administrative Procedures Act (RCW 34.05) and WAC 200-100-210 already include a process an entity can follow to seek an administrative hearing after issuance of a cease and desist order (see below).</p> <p><i>WAC 200-100-210 Standards for operations—Appeals of cease and desist orders.</i></p> <p><i>Within ten days after a joint self-insurance program covering property or liability risks has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapter 34.05 RCW and chapter 10-08 WAC.</i></p> <p>No changes were made based on these comments.</p>
13	<p>The legislature created this program so that non-profit entities with very small margins could get the kind of insurance that they need to provide the services that would otherwise have to be provided by local government or the state or some other entity, or else not even be provided.</p> <p>So there's a legislative intent that these non-profit entities have the ability to insure and to insure affordably. And as long as they meet criteria, in terms of a prudent fiscal fiduciary responsibility, that they could continue to provide that sort of insurance so that these non-profits can function on behalf of us all. And, as</p>	<p>Regarding concerns about prior legislation-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>Prior legislation is not within the scope of this rulemaking process.</p> <p>No changes were made based on these comments.</p>

	Summary of Comments	Our Response
	<p>you noted, NPIP has more than 500 members.</p> <p>So I'm here today really in that regard, but I'm also here today very disappointed in the process, in terms of how this rule-making came about. Some perspective: Two years ago, a bill drafted by OFM, where the self-insurance program used to be housed, would have done many of the things that you see in these rules.</p> <p>That bill somehow overnight became the bill of the competitors to the pools that are like NPIP. The agency essentially disavowed having any notion of where the bill came from, although, when pressed, they did say they did write the bill. The legislation was defeated, mainly because legislators saw that what this was really -- what this really was. It was a case of two competing business models, and one business model essentially, in my view, trying to use the legislature to uneven the playing field.</p>	
14	<p>The Southwest Washington Risk Management Insurance Cooperative was a pool formed in 1985 to self-fund risk management, property-casualty liabilities of its 33 school district and associated entity members. We purchase our excess insurance through another self-insured cooperative, the Washington Schools Risk Management Pool. That makes us both a self-insured cooperative and a member of the self-insured cooperative -- of another self-insured cooperative, both which are regulated by the State Risk Manager.</p> <p>In the wake of continued national attention on public entity pool insolvency, of which there were several in the past year, we value the State Risk Manager's continued concern for and focus on financial soundness of the joint property liability programs in Washington. We recognize the efforts to protect the public interest through the use of the two solvency test, using primary assets and total assets.</p> <p>The Southwest Washington Risk Management Insurance Cooperative supports all the proposed changes to WAC 200-100.</p>	<p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>No changes were made based on this comment.</p>
15	<p>We believe that these rule changes are unnecessary and will further increase the burden of funding insurance for non-profits.</p> <p>The changes proposed: The first change of: All joint self-insurance programs shall obtain an annual actuarial review as of the fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the 70, 80, and 90 percent confidence level.</p> <p>Why we believe this change is unwarranted? The rules currently governing self-</p>	<p>Regarding funding requirements for nonprofits during WRAC discussion-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>Because nonprofits do not have the same taxing, bonding and other financial mechanisms available as do local governments, the WRAC committee discussed requiring nonprofits to fund claims at the 90%</p>

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<p>insurance pools require that the programs fund to the 70th percentile. We believed that the current requirement is sufficient to maintain financially solvent pools, as we have demonstrated for the past ten years.</p> <p>The 70th percentile requirement was created barely two years ago, and there has been sufficient time -- there has not been sufficient time to determine that a more stringent requirement is necessary. As I mentioned, NPIP has easily met the 70th percentile requirement.</p> <p>The second rule change: Standards for solvency - Actuarially determined liabilities, program funding and liquidity requirements. Joint self-insurance programs operating under an approved plan and making satisfactory progress, according to the terms of the plan, shall remain under the supervisory watch by the risk manager until the terms of the approved plan have been met.</p> <p>Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements: A) an increase in frequency of examinations, the cost of which shall be the responsibility of the program; B) submission of quarterly reports; C) onsite monitoring by the State Risk Manager; and D) service of the cease and desist order upon the program.</p> <p>Why we believe this change is unwarranted: This requirement is too vague as to the definition of satisfactory progress. We believe that this rule allows too much discretion to the State Risk Manager, including the use of a cease and desist order. We believe that this verbiage will allow unilateral power to the regulator, without providing recourse, mediation, or resolution by some third party.</p> <p>The third change rule -- proposed change is the submission of audited financial statements to the State Risk Manager within eight months of the program's fiscal year end which meet the requirements of the State Auditor and State Risk Manager as described in the chapter.</p> <p>Why we believe that change is unwarranted: Many pools have experienced difficulties with required audits being completed within the current one-year requirement. We are concerned that this change will mean that the insurance pools will be considered out of compliance with that state regulator, that the Auditor's Office is unable to complete the required audit within the regulatory time line.</p> <p>Additionally, we are concerned that this required change in audited financial statements will remain irrelevant, as long as some insurance pools have a three-</p>	<p>confidence level. The concern was expressed by governmental risk pool staff members that nonprofit members would have more difficulty responding to a "cash call" of the membership than would local government members of a risk pool if pool funds were insufficient to pay claims.</p> <p>After some discussion, the department determined that the funding requirements would remain the same for nonprofits as for governmental risk pools (at the 80% confidence level).</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about increased cost and different pooling models-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The proposed language is needed to establish a minimum requirement for funding of outstanding claims to ensure risk pools operate in a financially sound way, which allows claims to be paid on behalf of risk pool members. The industry standard for governmental risk pools is between the 80th and 90th percent confidence level.</p> <p>These requirements apply equally to all risk pools and do not provide a competitive advantage for any risk pool. Pools still retain flexibility in making decisions to fund claims at higher confidence levels or to meet the minimum confidence level standards.</p> <p>Most pools are already funding in excess of the 80% confidence level, so it is unlikely that any cost increase will occur.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about increase in required funding to 80% confidence level under WAC 200-100-03001(1)</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>Actuaries working with risk pools recommend funding outstanding claims at minimum confidence levels between 80 and 90 percent. All risk pools follow a model in which some portion of the liability for</p>

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<p>year notice requirement. As we have suggested at meetings is that the regulator's goal -- as we have suggested, if the regulator's goal is transparency for members, then reduce the notice requirement to only one year, as has been suggested in the WRAC process but to this day has not been addressed.</p> <p>Regarding the WRAC or the DES process: The WRAC committee was established with the suggestion by the former director of the Office of Financial Management, OFM. This committee was assembled after concerns brought forward by NPIP and other programs regarding regulatory oversight, specifically legislation that was introduced. It was also assembled at the predecessor committee. The Property Advisory Board ceased operations due, in part, to our former governor terminating numerous committees and boards at the very beginning of the recession.</p> <p>Unlike the Property Advisory Board process, the WRAC process never established meeting procedures or process. The CER-102 states that the Department of Enterprise Services took input from a wide-ranging group of stakeholders, and that the changes to chapters here in WAC that we're discussing came from that exchange. The previous statement is not correct. Yes, meetings were held by a committee that was called the Washington Risk Pool Advisory Committee, but again the process for how rule-making would be considered by DES was never defined. At no time was a problem statement identified by the representatives from DES or members of the committee. And, additionally, no minutes were taken for the -- minutes for the meetings, and members of the committee were left to wonder what decisions had been made, if at all.</p> <p>Finally, it appears that DES only considered proposed rule-making changes that were submitted by a single member of the committee and disregarded all other proposals submitted by other members of the committee. I refer to my three-year notice requirement that I just mentioned about. The rules submitted by DES for consideration were generated by a single request from a member pool representative of the committee, not by members of the committee as a whole.</p> <p>At best, the requested rule changes should have been more fully vetted at the committee level to determine whether individual members of the committee can support or not support the changes.</p> <p>The requested rules submitted by DES are not supported by all members of the committee. Frankly, it is undetermined if a simple majority of the program</p>	<p>outstanding claims is jointly self-insured and paid from a pool of funds established by members. If monies are insufficient to fund unpaid claims in that self-insured layer, members must provide additional monies in response to a "cash call" from the pool. Even if a member leaves a pool, it can still be required to provide funds for past year shortages in which the member participated in the pool.</p> <p>This language is needed to ensure that risk pools adequately fund claims at a minimum confidence level of eighty percent. The effect will be that pools will place less reliance on a member "cash call" which would require members to provide additional monies for prior year claims which they understood to be funded when they paid their annual fee to the pool for coverage.</p> <p>When unpaid claim liabilities are adequately funded, the financial risk to local government and nonprofit members is reduced.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about supervisory watch and the issuance of a cease and desist order under WAC 200-100-03001(4) -</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>RCW 48.62.091(3) states that when the state risk manager determines that a joint self-insurance program covering property or liability risks is in violation of the statute or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.</p> <p>The proposed change clarifies that risk pools making progress toward meeting financial requirements in accordance with the plan submitted to and approved by the state risk manager remain under supervisory watch until the plan is completed, but a pool that is not making progress is subject to specific detailed actions listed in the proposed change. This clarification allows pools to know what is required to operate in a safe financial condition and what process will occur if they do not meet financial standards.</p> <p>The proposed language is needed because a risk pool that is</p>

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<p>support the changes.</p> <p>The rule changes submitted by one representative of the WRAC committee were driven by the need of that pool member to create a legislative competitive disadvantage for other member pools that did not follow specific structure or insurance Boeing model.</p> <p>The role of DES should be to help guide rule-making that provides a sufficient oversight, appropriate competition, and allows maximum flexibility through member-voted representation. It should not be the role of DES to decide through rule-making which Boeing model that will support. Most importantly, it should not be the role of DES to rewrite legislation through regulation.</p> <p>Many non-profit entities provide much needed services within their communities, services that would not be available if operating margins are increased by arbitrary rules/regulation changes. These rule changes are contrary to the intent of the legislation that was passed ten years ago that created the ability for governments and non-profits to self-insure.</p> <p>Let me repeat that. That's the important aspect here: These rule changes are contrary to the intent of the legislation passed ten years ago that created the ability for governments and non-profits to self-insure. That legislation allowed for a prudent, financially responsible process to provide less expensive options to entities that serve the public. By singling out one type of pool model, these proposed rule changes will not enhance fiduciary responsibility. They will, however, make it more difficult for non-profits to serve their communities.</p> <p>We respectfully request the rules remain as written and that DES look into the reason why DES staff thought it was necessary to bring these rule changes forward.</p>	<p>operating under an approved plan but continues to decline financially puts members at financial risk of making additional unscheduled payments or of not having their claims paid by the risk pool. The proposed change does not provide any additional powers to the risk manager from those already provided by statute. The Administrative Procedures Act (RCW 34.05) and WAC200-100-210 already include a process an entity can follow to seek an administrative hearing after issuance of a cease and desist order (see below).</p> <p><i>WAC 200-100-210 Standards for operations—Appeals of cease and desist orders.</i></p> <p><i>Within ten days after a joint self-insurance program covering property or liability risks has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapter 34.05 RCW and chapter 10-08 WAC.</i></p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about the requirement to provide audited financial statements within eight months of fiscal year end instead of the current one year requirement under WAC 200-100-037 -</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The State Auditor has committed that they will be able to complete the audits within the eight month time period, provided pools produce complete, timely and accurate financial statements ready for audit.</p> <p>The language is needed to increase transparency to risk pool members so that they may know the financial condition of their risk pool by viewing the timely, audited financials on the SAO website. This timely information helps them to make the best decisions about where to obtain their insurance coverage.</p> <p>No changes were made based on this comment.</p>

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		<p>Regarding concerns about reducing notice requirements to only one year</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The state risk manager has specific statutory authority to set standards in rule for contracts between self-insurance programs and private businesses including standards for contracts between third-party administrators and programs (See 48.62.061(3)).</p> <p>Pools are formed by interlocal agreement per statutory requirements. The state risk manager does not have authority to stipulate the notice requirements contained in the interlocal agreements between members.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about the Washington Risk Pool Advisory Council, the process used during development of proposed rules and response to petition-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The Property and Liability Advisory Board was eliminated during the 2009 legislative session. To provide an avenue of communication with stakeholders, the state risk manager formed the Washington Risk Pool Advisory Council (WRAC). The WRAC is an informal, ad hoc advisory group comprised of a representative from each of the fifteen property and liability risk pools. As an idea-sharing discussion group, no official minutes are taken.</p> <p>Beginning in November of 2011, the WRAC met to review and discuss rules to increase the financial soundness of risk pools. All WRAC members and interested stakeholders received meeting notices and agendas in advance of the meetings. WRAC member feedback was solicited by the state risk manager throughout the process. Several drafts of suggested changes to WAC 200-100, based on WRAC member input, were sent out to WRAC members and stakeholders.</p>

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		<p>In January 2013 the WRAC finished their final draft of the proposed language. This draft was submitted to DES as part of a petition received from a WRAC member. Once submitted, rules require that a petition must be considered and some action taken by the department. After formal review of the petition and rules submitted, the department felt it was necessary to move forward with the rulemaking process to ensure financial soundness of risk pools in the state.</p> <p>No changes were made based on this comment.</p>
16	<p>I had those two models. I had both programs come and explain to me the pros and cons, and then, as an individual, I had to make a decision.</p> <p>The reason I'm bringing it up is, you heard that there's an industry standard of the 80th percentile and how important that is. Let me tell you what my perspective was. As someone who was looking for insurance, what I was told was: This particular insurance model, which is not the Canfield model, which was a different insurance model, that they said, "Hey, we have \$40 million in the bank. That's why you should join our pool, along with the protection that it provides." As an insurance purchaser and the administrator of a school district, that somewhat offended me, based on the fact that why did you have \$40 million in the bank? Was it for the benefit of the program, or was that money that was maybe overpaid by other school districts that may not be used anytime soon, that could have been used to acquire teaching staff, provide services to students to lower the cost of insurance. I was offended at that time, and I decided that I wanted to do a different model which would require maybe lower costs up front.</p> <p>Now, what was important to me was -- I understood fully the two separate models. It was clear to me, and I chose -- because, at that time, I had reliance that we were going to be able to get insurance in the market. And, as time has proven, that continues to be the case. You can acquire insurance in the market, and I did not have to have as much dollars in the game, so to speak.</p> <p>Now, the protection was provided through a stop-loss policy. So, as you've heard: Hey, there could be future claims that may happen, and as an individual entity, you need to be protected against that.</p> <p>I chose to join a program that had a stop-loss policy which did provide protection on the back end. In my line of thinking, that stop-loss policy was going to provide me protection over multiple years. If I bought into the \$40 million policy plan, I had \$40 million, whereas if I bought into the stop-loss policy, I would</p>	<p>Regarding concerns about increased cost and different pooling models-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The proposed language is needed to establish a minimum requirement for funding of outstanding claims to ensure risk pools operate in a financially sound way, which allows claims to be paid on behalf of risk pool members. The industry standard for governmental risk pools is between the 80th and 90th percent confidence level. These requirements apply equally to all risk pools and do not provide a competitive advantage for any risk pool.</p> <p>Pools still retain flexibility in making decisions to fund claims at higher confidence levels or to meet the minimum confidence level standards. Most pools are already funding in excess of the 80% confidence level, so it is unlikely that any cost increase will occur.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns that increased reserves are not necessary for pools with stop loss policy-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>Unless a stop loss policy completely eliminates further payments for the self-insured claim liabilities, additional reserves are still needed. We are not aware of any pools that have unlimited stop loss policies, but are aware that some have a "layer" that pays a specific amount, with the responsibility for claims above that amount returning to the</p>

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<p>potentially have that over multiple years. So I felt, as an individual, that was better for me, and it was fully explained to me.</p> <p>So I somewhat disagree. In my mind, it has come down to two different models, and I believe each of us have a competitive opportunity to choose the model which best fits our needs. Those that were in the other program as a member of -- when I was in the Renton School District, I thought: Good for you. You have insurance for your students. That's the important point, not which model you choose, but that you had a choice.</p> <p>The other thing I would say is, as a Renton School District official, I had many opportunities to hold community -- oh. I guess I -- I had the opportunity to make decisions within my realm. I was in charge of transportation, I was in charge of food service, I was in charge of capital projects. I had the ability to make decisions on my own that would affect the community as a whole. I was very, very diligent about trying to find consensus building models within the community that brought multiple groups together to form an opinion that we could all live with. I tried to find the middle ground. What I believe is that the difficulty with the WRAC committee right now is that there are two dissenting opinions. There's a large number of pools that like one model, there's another number of pools that like a different model. What I believe is important right now is, unfortunately, the DES staff are leaning towards one particular model. We're not finding the middle ground, we're not trying to find commonality, and I believe that is what is difficult here.</p> <p>After having served on this committee for two years, I think, as you heard from Darren, the chairman of NPIP, recommendations that we have made as a voice have not been listened to and, I believe, have not been implemented. I believe, going forward, if I really want to have any voice, I need to find that other pool that submitted these changes and get them to submit them on my behalf. Otherwise, I'm not going to be heard, and to me that's very discouraging. I don't believe that's what our process is about. We need to find common ground. We need to find some things that will affect positively the pools, as a whole.</p> <p>So, for me, I've been kind of discouraged by this process, and I really -- I hope that in the future we can at least decide as a WRAC committee -- once we make the decision as a committee, if that's -- whatever that consensus model looks like. It may be modified consensus, it may not be full consensus, but we should agree how we're going to make decisions. And if there's a majority opinion, at least let there be a minority opinion. Let there be a voice.</p>	<p>pool if the stop loss limits are exceeded.</p> <p>The proposed rules require funding of claims not covered by stop loss or other insurance at the 80% confidence level. If claims are covered by a stop loss or other insurance policy, they are not considered a liability, the actuary does not include them when liabilities are estimated, the auditor does not consider them as a liability and they do not appear on the pool's financial statements, and the state risk manager does not require funding of those claims covered by stop loss or other insurance.</p> <p>Only outstanding claims not covered by stop loss or other insurance are considered liabilities that require funding at the 80% confidence level in the proposed rules.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about use of “solvency” term in rule-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The state risk manager is required by RCW 48.62.061 to adopt standards in rule for solvency. Solvency is used differently in insurance accounting than in school district accounting. Insurance companies are required by insurance commissioners to maintain reserves to pay policyholder claims, and they do not operate on a cash basis with just enough money to pay bills.</p> <p>Risk pools operate in the same way, on an accrual basis, where all outstanding claim liabilities are reported on the financial statements and assets (cash and investments) are maintained to pay those claims in the event the pool terminates or members leave.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about requiring reserves and not leaving money in member's hands to provide services-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>When pool claim liabilities are recorded in accounting records, they</p>

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	<p>And then, ultimately, I would also ask that there at least would be -- if a decision is going to be made, let's at least publish that decision, not wait until the rules come out and say, "Here's what we've decided to do." Let's be inclusive. That's what I believe government should be. It should be -- represent all of us, not just a single few.</p> <p>The last thing I will say is, there were some comments made about the viability of a pool. I will say, as an accountant, I do take exception to the term "solvency." To me, solvency, in accounting terms, means you have money to pay the bills. There's never been a question about whether that pool has had the ability to pay the bills. The bills have been paid.</p> <p>Let's not leave the money in some insurance program, where it's doing nothing more than sitting there, collecting interest so that we can have a nice big number to say how much money is in the bank. Let's get it back into the communities, where it makes a difference.</p>	<p>become a liability of all of the pool members unless the pool maintains enough assets to fund them. If pools do not sufficiently fund outstanding unpaid claims and members use monies for other purposes, they must still pay the claims that have occurred, whether they have pre-funded them "up front" as part of their annual premium to the pool, or fund them by responding to a "cash call" later.</p> <p>A cash call presents a financial risk to local government risk pool members by requiring them to provide unbudgeted and unexpected payments to fund prior year claims that were not adequately funded. By establishing and maintaining monies to fund claims at the 80% confidence level "up front", it is less likely that risk pools would need to issue a "cash call" of members later.</p> <p>Establishing reasonable reserves to fund claims provides stable and predictable costs and allows members to know how much they can budget for other services and purposes within their municipalities.</p> <p>No changes were made based on this comment.</p>
17	<p>I am currently a Lincoln County Commissioner, chairman of the board of the Lincoln County Commissioners, and also a board member of the Washington Rural Counties Insurance Pool, serve as a vice chairman of that board, and also serve on the fiscal committee for that board.</p> <p>When you end up going last, most probably everything has already been said, but there are a few things. The WRCIP has opposition to these new rules being invoked. We respectfully request that the rules remain as written. The WRCIP, the eight counties are Wahkiakum, Klickitat, Gray County, Lincoln County, Ferry County, Stevens County, Whitman County, and Asotin County. They're all represented in that pool.</p> <p>Pool models are different, and one size does not fit all. We believe the model that the WRCIP operates under makes the best use of taxpayer dollars, putting the risk back to the insurance companies through stop-loss and aggregate stop-loss protection rather than tie up millions of dollars in reserve of public monies that we think are better used at our level.</p> <p>4862 gives flexibility to pools to operate in a manner that fits their business model. More and more defined rules give them less flexibility. I know there needs to be some oversight, but these rules take more of the local oversight by</p>	<p>Regarding concerns about requiring reserves and not leaving money in member's hands to provide services-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>When pool claim liabilities are recorded in accounting records, they become a liability of all of the pool members unless the pool maintains enough assets to fund them. If pools do not sufficiently fund outstanding unpaid claims and members use monies for other purposes, they must still pay the claims that have occurred, whether they have pre-funded them "up front" as part of their annual premium to the pool, or fund them by responding to a "cash call" later.</p> <p>A cash call presents a financial risk to local government risk pool members by requiring them to provide unbudgeted and unexpected payments to fund prior year claims that were not adequately funded. By establishing and maintaining monies to fund claims at the 80% confidence level "up front", it is less likely that risk pools would need to issue a "cash call" of members later.</p> <p>Establishing reasonable reserves to fund claims provides stable and</p>

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	<p>electing officials away. And just as a little anecdotal piece, I was -- I sat on a board of a couple of years ago of the Washington Counties Insurance Pool, which was a pool that is now not in business anymore because of one that did go haywire. And I feel, if that pool had been -- that was an insurance -- a health insurance pool. If that pool had been run under the model that we run the WRCIP under, I think possibly some of those problems that ended up being the demise of that pool would not have happened.</p>	<p>predictable costs and allows members to know how much they can budget for other services and purposes within their municipalities.</p> <p>No changes were made based on this comment.</p> <p>Regarding concerns about increased cost and different pooling models-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The proposed language is needed to establish a minimum requirement for funding of outstanding claims to ensure risk pools operate in a financially sound way, which allows claims to be paid on behalf of risk pool members. The industry standard for governmental risk pools is between the 80th and 90th percent confidence level.</p> <p>These requirements apply equally to all risk pools and do not provide a competitive advantage for any risk pool. Pools still retain flexibility in making decisions to fund claims at higher confidence levels or to meet the minimum confidence level standards.</p> <p>Most pools are already funding in excess of the 80% confidence level, so it is unlikely that any cost increase will occur.</p> <p>No changes were made based on this commentRegarding concerns that increased reserves are not necessary for pools with stop loss policy-</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>Unless a stop loss policy completely eliminates further payments for the self-insured claim liabilities, additional reserves are still needed. We are not aware of any pools that have unlimited stop loss policies, but are aware that some have a "layer" that pays a specific amount, with the responsibility for claims above that amount returning to the pool if the stop loss limits are exceeded.</p> <p>The proposed rules require funding of claims not covered by stop loss or other insurance at the 80% confidence level. If claims are covered by a stop loss or other insurance policy, they are not considered a liability, the actuary does not include them when liabilities are</p>

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		<p>estimated, the auditor does not consider them as a liability and they do not appear on the pool's financial statements, and the state risk manager does not require funding of those claims covered by stop loss or other insurance.</p> <p>Only outstanding claims not covered by stop loss or other insurance are considered liabilities that require funding at the 80% confidence level in the proposed rules.</p> <p>No changes were made based on this comment.</p>
18	<p>I've been in your shoes before, actually. I've served as a staff member to a governor, I have served as senior staff to a house caucus, I have served as an assistant director in a state agency where I've had to oversee WAC hearings in the past, so I think I know a little bit about the process here and what's going on. And I want to go back to what I said on Monday. These changes, in part, were part of some legislation that was drafted by the Office of Financial Management, not all of them, some of them. Two years ago, OFM tried to pass this legislation. They did it essentially by handing it off to one of the pools that had -- you've heard of that actually is in competition with some of the Canfield pools and NPIP. And, as you might recall, their lobbyist then took, as I mentioned on Monday, then took the bill and ran it as their bill rather than OFM's bill. When this bill died -- and it died because there was no consensus, really, on whether or not the changes were needed. It also died because of legislative intent, and I think that's really very important to consider.</p> <p>What was the legislature's intent when they put this program in place that allowed non-profits to pool? It's basically so that they can provide the types of services that you've heard here today without overburdening them, still within fiduciary responsibility, but without over-taxing the dollars that they have so that they can actually provide the services.</p> <p>What happens if they can't provide the services? Well, either they don't get provided or the Government pays for it. These non-profits -- and that's what the legislative intent was. It was to make it easier for non-profits to provide much needed community services so that the Government didn't have to. That was the intent of the legislature. Now, legislation died.</p>	<p>Regarding concerns about prior legislation –</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>While we appreciate the comment, prior legislation is not within the scope of this rulemaking.</p> <p>No changes were made based on this comment.</p>

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19	<p>Now I think we need to look at the rule change here. Does it impact legislative intent? And I think the answer is yes. It makes it more expensive for these non-profits, potentially, to provide their services. That's counter to the legislative intent.</p> <p>So I guess what I would say is, the legislation that was put forward that was attempted to make some of these changes did not pass, because the legislature did not believe in it. Now it appears that the agency, since they couldn't make this happen in the legislature, is trying to do this through the WAC process. I've seen this before.</p> <p>Like I said, I've been around Olympia for 25 years. I've seen this before. If the agency wants to make these changes, if they are that valid and if they have such a direct impact on legislative intent, let the agency come forward with legislation to change the legislative intent that was set up ten years ago. And I think, for the legislators who actually put -- who pushed this legislation, who sponsored it, who got it through committee, got it to the governor's desk, I think they would tell you the exact same thing.</p>	<p>Regarding concerns about increased cost for nonprofit pools -</p> <p>The department appreciates the time taken to provide this comment and recognizes the concerns and opinions presented.</p> <p>The proposed language is needed to establish a minimum requirement for funding of outstanding claims to ensure risk pools operate in a financially sound way, which allows claims to be paid on behalf of nonprofit risk pool members. The industry standard for governmental risk pools is between the 80th and 90th percent confidence level.</p> <p>These requirements apply equally to all risk pools and do not provide a competitive advantage for any risk pool. Pools still retain flexibility in making decisions to fund claims at higher confidence levels or to meet the minimum confidence level standards.</p> <p>Most pools are already funding in excess of the 80% confidence level, so it is unlikely that any cost increase will occur. 13 of 15 risk pools are currently funded at approximately the 95% confidence level (including NPIP). No increase to members of these pools should occur as a result of these proposed changes to the rules. Any pool that is funded over the minimum required level has the discretion to return excess funds over the 80% confidence level to their members.</p> <p>No changes were made based on this comment.</p>
20	<p>Paratransit Services was formed 33 years ago in response to a need in our local community for accessible transportation services. We are a private, nonprofit 501(c)(3) transportation company headquartered in Bremerton, WA. Since 1980, we have been providing transportation services in partnership with transit agencies, social services organizations, municipalities, counties, our state government, and other transportation providers to deliver a broad catalogue of transit services—fixed route, Dial-A-Ride, vanpools, employee shuttles, deviated fixed route service, Non-Emergency Medicaid Transportation (NEMT), special event transportation, and various combinations of these services. We currently operate in 3 states, Washington, Oregon and Northern California with over 300 employees. Paratransit Services has purchased it's insurance from NPIP (Non Profit Insurance Program) for the last 10 years, since it inception in</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>Claims experience is often used in setting the annual premiums that pools collect from members. The confidence level measurement measures sufficiency of funding at year end to pay remaining outstanding claims.</p> <p>These are two separate measurements. The actual claims experience is based on past claim settlements. The confidence level measurement is based on the estimated cost of settling future outstanding claims. If the pool has collected more money than it needed to pay claims, the actual claims experience will be lower than</p>

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	<p>2004. Prior to insuring with NPIP our insurance rates had skyrocketed over 900% in the prior 3 years and nearly putting Paratransit Services out of business. This would have had a devastating effect on the thousands of clients we serve and the difference we make in their lives each and every day, let alone our 300+ staff. Since insuring with NPIP we have received stable rates, excellent risk management and outstanding claims handling. Paratransit Services has been following the recent attempt by DES to make changes to an existing law that has been working well for 10 years. We believe that the proposed changes are in direct conflict with the legislative intent when non-profits were originally allowed to pool within the framework of RCW 48.62. The intent of the legislation was to provide maximum flexibility to insurance program members while ensuring that the programs remain solvent. The DES proposed WAC changes continue to erode maximum flexibility and are being done in the name of solvency. Paratransit believes that the current rules governing self-insurance pools requiring that the programs are funded to the 70th percentile are sufficient, especially in light of the fact that NPIP has maintained an actual claims experience rating in the 30-35th percentage range. However, in the event a catastrophe event should occur, the non-profit pool would be able to re-assess over a period of years, much like any other government pool who has taxing authority. The only time a government entity would consider a tax authority request would be if there was a program wide catastrophic loss not covered through insurance. We believe that by increasing the funding requirement over 70% when the actual experience rating runs between 30-35% would force members to overpay today for claims that are highly unlikely to develop in the future, thus having less funds to provide the valuable services each non-profit provides to its community. Paratransit Services urges DES NOT to propose that the funding requirement be increased to 80%, but remain at the 70% level.</p>	<p>anticipated and the pool will build excess reserves measured at higher confidence levels at year end.</p> <p>If a pool consistently has too much money and its reserves continue to increase, it may want to work closely with its actuaries and examine its reserving practices. The pool may choose to reduce rates or return money to members, depending on member agreements.</p> <p>No changes were made based on these comments.</p>
21	<p>WCIA supports the changes to WAC 200-100 because increasing confidence levels from 70% to 80% and improving solvency tests serves to protect the public that risk pools serve. The failure of any pool is a reflection on all and therefore the pooling community has a vested interest in ensuring financial obligations are met. The last thing public entities need, when they are still struggling financially, are surprises in the form of judgments not being paid or cash calls. Financial solvency is the heart of what we do for the public we serve. The lessons learned in the recent financial crisis have proven that state-based regulation of the insurance industry helped that industry survive. The current standards for pooling are nowhere near as stringent. The proposed changes to WAC 200-100 are a step towards improving solvency standards and allow the</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

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	regulators to take action in a timely manner. Our support of the changes is not because of an implied business advantage but because promises made should be promises kept.	
22	Has the State Risk Manager contemplated rules regarding conflicts of interest that may arise when contractors serve as Program Manager, Broker and Claims Administrator? Some states have considered these duties to be in conflict. The potential conflict may affect the pool board's ability to receive independent advice and counsel. An improved environment would require that the Program manager and or the family of interested companies could not serve as the broker or claims administrator.	The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented. We will consider this topic in a future rulemaking. No changes were made based on these comments.
23	As the Executive Director of the Washington State Transit Insurance Pool (WSTIP), representing the interests of 25 public transit agencies and expressing their collective will, we endorse the proposed changes as submitted. These changes will have a negligible impact on our current program including actuarial and asset test requirements. We believe it is incumbent upon the State's regulatory body to ensure that all public pooling entities are adequately funded to protect the interests of the members but also the constituents they represent. We can find no reason not to move forward with these changes and would encourage their adoption as soon as practicable.	The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented. No changes were made based on these comments.
24	<p>The original legislative intent of pooling in Washington was to allow local control, grant maximum flexibility, and ensure operation in a safe and sound manner. The volatility of the insurance market and the unpredictability of claims was understood when the legislation was passed. The original legislation allowed authorized local bodies of elected boards to fund appropriately for claims and insurance cost, while encouraging competition within the marketplace.</p> <p>I am opposed to changing the rules governing self-insurance pools by requiring them to increase the funding level from the 70th percentile to the 80th percentile. No insurance program or pool in the State of Washington that funded itself at the expected level, as determined by an actuary, has had any financial issues. There is no justification to increase the funding level. Having a state mandate to fund higher than a 70th confidence factor removes legislative authority granted to local boards of self-insured pools.</p> <p>For example, NPPI has successfully operated for ten years at the current funding level of the 70th percentile and its actual experience rating is at the 30-35th percentile. Requiring NPPI to move to a 80th percentile level of funding will</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>“Claims experience” and “confidence level” are:</p> <ul style="list-style-type: none"> • two different measurements; • used to measure different things; and • used for different purposes. <p>Claims experience is often used in setting the annual insurance premiums that pools collect from members. The confidence level measurement measures sufficiency of funding at year end to pay remaining outstanding claims.</p> <p>The actual claims experience is based on past claim settlements. The confidence level measurement is based on the estimated cost of settling future outstanding claims. If the pool has collected more money than it needed to pay claims, the actual claims experience will</p>

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	<p>significantly overfund the pool. In NPIP, this change will require over 550 non-profit organizations that serve Washington citizens to pay higher insurance premiums without increased benefit.</p> <p>I request that you retain the current rule that requires funding the insurance pool to the 70th percentile and that you do not unnecessarily increase this requirement to the 80% percentile.</p>	<p>be lower than anticipated and the pool will build excess reserves measured at higher confidence levels at year end. If a pool consistently has too much money and its reserves continue to increase, it may want to work closely with its actuaries and examine its reserving practices.</p> <p>The pool may also choose to reduce rates or rebate money to members, depending on member agreements.</p> <p>No changes were made based on these comments.</p>
25	<p>This is the last time I am going to participate in one of these processes; why pretend that they are anything other than a whitewash of what the Risk Manager wants to do? The overwhelming testimony is that the proposed rules negatively target the pools administered by Canfield, especially NPIP. The majority of the positive testimony is sprinkled with references to public bodies and public funds, completely ignoring the fact that NPIP is not comprised of public bodies and does not, by attorney general's ruling, handle public funds.</p> <p>Testimony is offered about WRAC consensus which was supposedly developed supporting the proposed changes. How can that be factual when seven of the 16 pools, representing more than 50% of the total members of the combined pools, do not agree with the proposed changes? The process shouts, "The fix is in!"</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>
26	<p>The Non Profit Insurance Program's actual claims experience is 30 to 35 percent. Requiring reserves at the 80% confidence level will overfund the pool.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented. No changes were made based on these comments. Claims experience is often used in setting the annual premiums that pools collect from members. The confidence level measurement measures sufficiency of funding at year end to pay remaining outstanding claims. These are two separate measurements.</p> <p>The actual claims experience is based on past claim settlements. The confidence level measurement is based on the estimated cost of settling future outstanding claims. If the pool has collected more money than it needed to pay claims, the actual claims experience will be lower than anticipated and the pool will build excess reserves measured at higher confidence levels at year end.</p> <p>If a pool consistently has too much money and its reserves continue to increase, it may want to work closely with its actuaries and examine its</p>

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		reserving practices to resolve the issue. The pool may choose to reduce rates or return money to members, depending on member agreements.
27	If the solvency requirements are increased from 70% to 80% confidence level, insurance rates will increase and services to those served by nonprofits will be reduced.	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>NPIP already maintains reserves at the 95% confidence level, according to the most recent reports submitted by NPIP. No increases in rates to members should occur as a result of proposed changes to the rules.</p> <p>No changes were made based on these comments.</p>
28	The proposed rules were submitted by one member of the WRAC to create a competitive disadvantage for other pools following a different pooling model.	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>All pools follow a model in which they maintain reserves to fund claims or claim deductibles not covered by insurance. All pools purchase some insurance. The proposed rules only require that claims not covered by excess, stop loss or reinsurance are funded at the eighty percent confidence level.</p> <p>The proposed rules pertain equally to all pools, regardless of how much or what type of insurance is purchased. It is only the pool's liabilities that require funding. No pool will experience an advantage or disadvantage as a result of the proposed rule.</p> <p>No changes were made based on these comments.</p>
29	We are paying today for claims unlikely to come and increasing our insurance costs.	<p>Each pool's year end actuarial report provides the pool with an estimate of known claims and claims likely to occur that have not yet been reported (known as IBNR, or Incurred But Not Reported).</p> <p>The accuracy of those estimates are based on historical claims data and other information provided by the pool to its actuary. Each pool works closely with its own actuary to avoid overfunding or underfunding reserves.</p> <p>The proposed rules require funding the claims liability estimated by each pool's own actuary at the eighty percent confidence level. The industry standard for risk pools is between the 80th and 90th percent</p>

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		<p>confidence level.</p> <p>No changes were made based on these comments.</p>
30	Supports keeping more money in school districts and not putting it into a program. Keep the cost of program as low as possible through aggressive risk management..	<p>When pool claim liabilities are reported in accounting records, they become a liability of all of the pool members unless the pool maintains enough assets to fund them.</p> <p>If pools do not sufficiently fund outstanding unpaid claims and members use monies for other purposes, they must still pay the claims that have occurred, whether they have pre-funded them "up front" as part of their annual premium to the pool, or fund them by responding to a "cash call" later. A cash call presents a financial risk to local government risk pool members by requiring them to provide unbudgeted and unexpected payments to fund prior year claims that were not adequately funded.</p> <p>By establishing and maintaining monies to fund claims at the 80% confidence level "up front" it is less likely that risk pools would need to issue a "cash call" of members later. Establishing reasonable reserves to fund claims provides stable and predictable costs and allows members to know how much they can budget for other services and purposes within their municipalities.</p> <p>No changes were made based on these comments.</p>
31	Bothered by diminishing local control. Seventy percent is adequate. There could possibly be a reassessment	<p>The industry standard in funding outstanding claim liabilities for risk pools is between the 80th and 90th percent confidence level.</p> <p>Local governments budget for insurance costs and are not positioned to pay unexpected and unbudgeted costs for claims they understood would be paid when they made their annual premium payment to the pool.</p> <p>No changes were made based on these comments.</p>

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32	<p>Washington Counties Risk Pool supports the proposed amendments to the WAC that are being put forward</p> <p>RCW 48.62 was designed to respond to the issues relative to local governments, not to corporations</p> <p>Nowhere in RCW 48.01.050 is a nonprofit not considered as an insurer. Local governments are not considered as an insurer under the insurance code.</p> <p>The responsibility of the coverage for reinsurance lies with the pool. If the reinsurer disappears, as has occurred in the past, then coverage is still there for the membership. There just isn't any reinsurance company to recover the funds on behalf of the pool. That is where confidence level comes into play.</p> <p>The Washington Counties Risk Pool made a change to increase to 98 percent probability that there were going to pay any and all claims.</p> <p>When the recession occurred, any commercial insurers were shaky, and AIG required a bail-out. The pool had excess insurance from AIG.</p> <p>We are not an insurance company, we are a service agency and we serve local governments who are members of our organization</p> <p>Our board maintained a minimum 90 percent confidence level, allowing us to pay out on a large claim when our reinsurer became insolvent</p> <p>The thing our members ask of us, because they are public entities tied to their budgets, is don't put us in a position having a cash call or a large premium increase</p> <p>We are in favor of the proposal to identify a procedure for which the state risk manager can work with risk pools who find themselves falling below a set confidence level.</p> <p>We are in favor of requiring the pools to provide audited financials within a reasonable amount of time, eight months seems reasonable</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

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33	<p>Surprised that there are no rules about the appropriate level of insurance that members should have.</p> <p>Funding levels should be board choice</p> <p>state mandated funding requirements jeopardize all pools ability to compete in the marketplace</p> <p>The largest exposure to pools is not the self-insured portion, it's the reinsurance or excess insurance placement</p> <p>Would like to mandate using an AM Best rated carrier and one-year notification requirements</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>
34	<p>Found interesting that fourteen of fifteen pool meet the eight percent confidence level requirement</p> <p>One pool currently borders on insolvency. When one pool fails, it affects all pools.</p> <p>Appreciates the option in the proposed rule for helping pools recover</p> <p>Appreciates the setting of the eighty percent confidence level</p> <p>Appreciates proposal for State Auditor to complete audits within eight months of fiscal year end</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>
35	<p>Is concerned that pools using a certain business model support the proposed rule while those under another business model oppose it</p> <p>Is concerned that department provided literature at the start of the hearing and mentioned client by name</p> <p>Is concerned that two months after hearing process was complete an additional hearing was held</p> <p>Is concerned that the WRAC committee which has no legislative authority and is a place to share ideas was used as a reason to push forward rule change</p> <p>Is concerned that proposed rule is same as prior legislation that did not pass</p> <p>Is concerned that pools supporting the rule already fund over 80 percent. The rule doesn't impact them, just their competition</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

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36	<p>Solvency means an ability to deliver on the promise to pay for what you have said you can pay for without the concern that later they will be reassessed</p> <p>Inflation is constant. Claims cost more today than they did 10, 15, 20 years ago and they'll cost more 10 or 15 or 20 years from now than they do today</p> <p>We depend on regulators to set standards and require that standards are met.</p> <p>We completely support higher standards, and even at 80 percent, we don't believe that that is still meeting the high standard and the promise we have made to our members to deliver</p> <p>If we have learned anything from recent financial crisis, it is that regulators are important.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>
37	<p>The Washington Cities Insurance Authority wholly supports raising from 70 to 80 percent confidence level</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>
38	<p>The Washington State Transit Pool has been operating since 1989 and represents about 100 million miles a year in exposures. The pool has a history of claims and it is up to the actuary to look at the history and determine the exposure in the upcoming year. We have a practice of funding at the 90% confidence level because we don't need surprises. One of the fundamental processes of government is no surprises; you set a budget and that is the number. When an actuary is telling you what number you can expect in the following year, why would you do less? Why would you roll the dice and hope that you are going to do better than the actuary?</p> <p>We would like to see it go to 80 percent; that is still a 20 percent risk.</p> <p>We want this ruling to go forward and implement as soon as is practicable</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>